

REMARKS

Applicants have now had an opportunity to carefully consider the Examiner's comments set forth in the Office Action of October 19, 2004.

Reconsideration of the Application is requested.

The Office Action

Claims 14, 16 – 17 and 19 – 28 remain in this application. Claims 1 – 13, 15 and 19 have been canceled.

Claims 14 and 16 – 17 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Woods et al. (U.S. Patent No. 5,345,218).

Claim 15 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Woods et al. in view of Pandohie (U.S. Patent No. 5,565,841).

Claims 18 – 28 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Pandohie.

Comments/Arguments

Independent claim 14 has been amended to further distinguish over the cited references. Specifically, claim 14 has been amended to disclose a voltage sensor to detect a voltage between the brake actuator switch and electrical ground to determine the state that the brakes are in, either the brakes are in an applied (engaged) state or in an unapplied (disengaged) state. Pandohie fails to teach or fairly suggest the voltage sensor of independent claim 14 of the present application.

The Office Action asserts that the brake switch of Pandohie equivalently performs the same function as the voltage sensor of the present invention and would have been obvious to one of ordinary skill in the art as being a design choice. The applicants respectfully submit that there is no motivation to modify the brake switch of Pandohie to the design of the voltage sensor of the present application. The Applicants respectfully cite section 2143.01 of the MPEP, which states that the prior art must suggest the desirability of the claimed invention, that is obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion or motivation to do so. The Applicants can find no motivation in the cited prior art to modify the brake switch of Pandohie to produce the voltage sensor of the present invention. The MPEP goes on to state that the mere fact

the references can be combined or modified is not sufficient to establish prima facie obviousness and the fact that the claimed invention is within the capabilities of one of ordinary skill in the art is not sufficient by itself to establish prima facie obviousness.

Regarding dependent claims 19 – 23, these claims have also been amended to further distinguish the present invention from the teachings of the cited references. Claims 20 and 21 disclose a lockout timer and a modulation interval timer. The lockout timer and the modulation interval timer both send control signals to a pulse width modulator defining the state that each timer is in.

The pulse width modulator then uses the control signals from the two timers to form and send a control signal to the control element. Pandohie also fails to teach or fairly suggest a lockout timer and a modulation interval timer both sending signals to a pulse width modulator. Rather, Pandohie discloses a single timer signal and a clock generator signal being coupled by an AND gate and then sent to a transistor which is used to drive a relay (the control element) in order to interrupt the power supply to a plurality of brake lamps. The second timer of Pandohie sends a signal to the first timer and does not send a signal to the control element (the drive transistor and relay) as is done in the present invention. Claims 20 and 21 further distinguish over the cited references for at least the reason that both timer signals are sent to the pulse width modulator which then sends a control signal to the control element where in Pandohie they are not.

Furthermore, the Office Action again asserts that the sending of signals by the lockout timer and modulation interval timer to the pulse width modulator would have been obvious to one of ordinary skill in the art as an alternative to the circuit of Pandohie. The Applicants again can find no motivation in the cite art to modify the circuit of Pandohie to produce the presently claimed invention.

For at least the reasons stated above, the Applicants respectfully submit that independent claim 14 and claims 16 – 17 and 19 – 23 which depend therefrom distinguish over the cited references and are in condition for allowance.

Regarding the rejection of independent claim 24, claim 24 and dependent claims 25 – 28 are method claims mirroring the apparatus claims, 14, 16 – 17 and 19 – 23, and for the same reasons as cited above the Applicants respectfully

submit that claims 24 – 28 distinguish over the cited art and are in condition for allowance.

CONCLUSION

For the reasons detailed above, it is submitted all claims remaining in the application (Claims 14, 16, 17, 19-28) are now in condition for allowance. The foregoing comments do not require unnecessary additional search or examination.

In the event the Examiner considers personal contact advantageous to the disposition of this case, he/she is hereby authorized to call Patrick R. Roche, at Telephone Number (216) 861-5582.

Respectfully submitted,

FAY, SHARPE, FAGAN,
MINNICH & McKEE, LLP

1/19/05
Date

Patrick R. Roche
Patrick R. Roche
Reg. No. 29,580
1100 Superior Avenue, 7th Floor
Cleveland, Ohio 44114-2579
(216) 861-5582